MT LEGISLATIVE HISTORY

Chapter 38 1977

Bill (H) 36 S _____ Original bill & hist. ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	JAN 7	C	Hearing Date(s)	FEB 24	C
	JAN 10	C		_____	C
	_____	C		_____	C
	_____	C		_____	C
Date Out	_____	C		_____	C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 36

INTRODUCED BY MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO STANDARDIZE THE GROUNDS FOR UNLAWFUL DISCRIMINATION TO INCLUDE THE TERMS "RELIGION" AND "CREED" AND TO DELETE THE TERM "ANCESTRY" WHICH IS INCLUDED IN THE TERM "NATIONAL ORIGIN" BY DEFINITION; AMENDING SECTIONS 11-3283, 11-3917, 16-4806, 37-104.10, 40-3512, 64-301, 64-306, 64-307, 64-317, 64-318, 64-319, 64-320, 64-321, 64-323, 64-324, 71-2412, AND 80-2806, R.C.M. 1947; AND REPEALING SECTION 64-211, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"11-3283. Persons in classified service not affected by political or religious opinions or race. No person in the classified service or seeking admission thereto ~~shall~~ may be appointed, reduced, ~~or~~ removed, or in any way favored or discriminated against, ~~or~~ because of political opinions or affiliations, or because of race, color, creed, or ~~religious beliefs~~ religion."

Section 2. Section 11-3917, R.C.M. 1947, is amended to read as follows:

"11-3917. Prohibition against discrimination. For all of the purposes of this act, no person ~~shall,~~ may be subjected to discrimination because of race, religion, creed, color, or national origin, ~~be subjected to any discrimination.~~"

Section 3. Section 16-4806, R.C.M. 1947, is amended to read as follows:

"16-4806. Discrimination in employment prohibited. No contract of employment ~~will~~ may be entered into except in compliance with the Equal Opportunity Act of 1966, and executive order of 1966, providing that there be no discrimination in the employment of persons ~~due to~~ because of race, religion, creed, color, or national origin."

Section 4. Section 37-104.10, R.C.M. 1947, is amended to read as follows:

"37-104.10. Type of arguments to be excluded from pamphlet — liability for libel. (1) The secretary of state shall reject and shall not file or print in the voters' pamphlet an argument or other matter:

(a) held by the attorney general to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter, or to contain any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, creed,

INTRODUCED BILL

religion, or sex~~,~~; or ~~any matter~~

(b) not allowed to be sent through the mail. ~~Such arguments may not be filed or printed in the voters' pamphlet.~~

(2) Nothing in this ~~act~~ section relieves ~~either an argument nor~~ an author of an argument from civil or criminal responsibility for statements contained in an argument printed in the voters' pamphlet."

Section 5. Section 40-3512, R.C.M. 1947, is amended to read as follows:

"40-3512. Unfair discrimination, rebates prohibited — property, casualty, surety insurances. (1) No property, casualty, or surety insurer or any employee, ~~or~~ representative, ~~thereof, and no~~ agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, ~~shall~~ pay, allow, or give~~,~~ or offer to pay, allow, or give, directly or indirectly, ~~as an inducement to insurance, or after insurance has been effected,~~ any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; ~~of insurance, or~~ any special favor or advantage in the dividends or other benefits to accrue thereon~~,~~; or any valuable consideration or inducement ~~whatever,~~ not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy~~,~~ ~~nor~~ or any employee of ~~such~~ the insured ~~shall~~ may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium~~,~~; ~~or any such~~ special favor or advantage; or valuable consideration or inducement.

(3) No such insurer ~~shall~~ may make or permit any unfair discrimination ~~either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin,~~ in the premium or rates charged for insurance, ~~or~~ in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section ~~shall~~ may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents~~,~~ or solicitors~~,~~ or as prohibiting ~~any~~ an insurer from allowing or returning ~~to its participating policyholders, members or subscribers,~~ lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers."

Section 6. Section 64-301, R.C.M. 1947, is amended to read as follows:

"64-301. Freedom from discrimination ~~as civil right~~ in employment — and in places of public ~~accommodations~~ accommodation and amusement. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) ~~The~~ the right to obtain and hold employment without discrimination; and

(2) ~~The~~ the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement."

Section 7. Section 64-306, R.C.M. 1947, is amended to read as follows:

"64-306. Specific ~~Discriminatory~~ discriminatory practices ~~described and prohibited~~. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, ~~or~~ to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization, or joint labor management committee controlling apprenticeship, to exclude or expel any person from its membership, or from an apprenticeship or training program or to discriminate in any way against a member of, or an applicant to, the labor organization, or an employer or employee because of race, marital status, creed, religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use ~~a form of~~ an employment application ~~for employment~~, which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification;

~~(c)~~ (2) ~~The~~ The exceptions permitted in ~~this~~ subsection (1) based on bona fide occupational qualifications~~,~~ shall be strictly construed.

~~(2)~~ (3) ~~It~~ Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin ~~unless based on reasonable grounds~~;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin ~~except when the distinction is based on reasonable grounds~~.

~~(3)~~ (4) ~~It~~ Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin ~~, except when the distinction is based on reasonable grounds~~;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property~~, except when the distinction is based on reasonable grounds~~; or

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property~~, except when the distinction is based on reasonable grounds~~. A private residence designed for ~~single family~~ single-family occupancy~~,~~ in which sleeping space is rented to guests ~~in the family home~~ and in which the landlord also resides~~, shall be~~ is excluded from the provisions of this ~~act~~ subsection.

~~(4)~~ (5) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against

the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

~~(5)~~ (6) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person ~~belonging to~~ of a particular race, creed, religion, sex, marital status, color, ~~or certain~~ age, or national origin or possessing a physical or mental handicap, is unwelcome, or not desired or solicited, unless based on

reasonable grounds;

(c) to refuse employment to a person, ~~or~~ to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in ~~article~~ Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in ~~article~~ Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

~~(6)~~ (7) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, ~~condition, and~~ conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning

the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation ~~through a quota or otherwise~~ of educational opportunities of a group or its members through a quota or otherwise because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

~~(7)~~ (8) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, ~~religious~~ religion, creed, national origin, ~~ancestry,~~ age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

~~(8)~~ (9) It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed

any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

~~(9)~~ (10) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed."

Section 8. Section 64-307, R.C.M. 1947, is amended to read as follows:

"64-307. ~~Discrimination~~ When discrimination justified ~~when~~. (1) Sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory ~~criteria~~ criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

~~(2)~~ (3) Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy."

Section 9. Section 64-317, R.C.M. 1947, is amended to read as follows:

"64-317. Employment of state and local government

personnel ~~without regard for race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry~~ = discrimination prohibited. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications, without regard to race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or ancestry~~.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications ~~appraisal~~, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons."

Section 10. Section 64-318, R.C.M. 1947, is amended to

read as follows:

"64-318. Nonparticipation in discriminatory practices. (1) All services of every state and local governmental agency shall be performed without discrimination based upon race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or ancestry~~.

(2) No state or local facility ~~shall~~ may be used in the furtherance of any discriminatory practice, nor ~~shall any~~ may a state or local agency become a party to ~~any~~ an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state and local agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this act and shall initiate comprehensive programs to remedy any defect found to exist."

Section 11. Section 64-319, R.C.M. 1947, is amended to read as follows:

"64-319. Public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods and services shall contain a provision that all hiring shall be on the basis of merit and qualifications and a provision that there ~~shall~~ may be no discrimination on the basis of race, color, ~~religious~~ religion, creed, political ideas, sex, age,

marital status, physical or mental handicap, or national origin~~, or ancestry~~ by the persons performing the contract. As used in this act, "qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Section 12. Section 64-320, R.C.M. 1947, is amended to read as follows:

"64-320. Employment requests -- cooperation with commission ~~for human rights programs~~ -- enforcement of ~~the~~ policy ~~of the act~~. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers~~,~~ shall accept job orders on a fair practice basis. ~~Any~~ A job request indicating an intention to exclude ~~any~~ a person because of race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or ancestry~~ shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights ~~initiated~~ for the purpose of broadening the base of job recruitment and shall further cooperate with ~~all~~ employers and unions providing such programs.

(3) The department of labor shall cooperate with the commission for human rights in encouraging and enforcing

compliance by employers and labor unions ~~to comply~~ with the policy of this act and ~~promote~~ promotion of equal employment opportunities."

Section 13. Section 64-321, R.C.M. 1947, is amended to read as follows:

"64-321. Licensing. No state or local department, board, or agency ~~shall~~ may grant, deny, or revoke the license or charter of ~~any~~ a person on the grounds of race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or ancestry~~. Each state and local agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, ~~and~~ eliminate discrimination, and enforce compliance with the policy of this act."

Section 14. Section 64-323, R.C.M. 1947, is amended to read as follows:

"64-323. State programs. All education, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state or local agencies~~,~~ or in which state or local agencies participate~~,~~ shall be open to all persons, who shall be accepted on the basis of merit and qualifications without regard to race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or~~

~~ancestry~~. Such programs shall be conducted to encourage the ~~fullest~~ full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall be encouraged to involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest."

Section 15. Section 64-324, R.C.M. 1947, is amended to read as follows:

"64-324. Distribution of funds~~, benefits, loans, and financial~~ -- withholding state assistance. Race, color, ~~religious~~ religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin~~, or ancestry shall~~ may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; ~~to qualify applicants for benefits authorized by law~~ nor ~~shall~~ may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices."

Section 16. Section 71-2412, R.C.M. 1947, is amended to read as follows:

"71-2412. Discrimination forbidden. The services provided under this act shall be made available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964."

Section 17. Section 80-2806, R.C.M. 1947, is amended to read as follows:

"80-2806. Availability of services. The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay~~,~~ and shall comply with Title VI of the Civil Rights Act of 1964."

Section 18. Repealer. Section 64-211, R.C.M. 1947, is repealed.

-End-

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CODE COMMISSIONER
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DIRECTOR, RESEARCH

LC 0009

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 36

TO STANDARDIZE THE GROUNDS FOR UNLAWFUL DISCRIMINATION TO INCLUDE THE TERMS "RELIGION" AND "CREED" AND TO DELETE THE TERM "ANCESTRY" WHICH IS INCLUDED IN THE TERM "NATIONAL ORIGIN" BY DEFINITION.

In many antidiscrimination provisions of the code the term "religion" is used. In others, the term "creed" is used. The terms are apparently used interchangeably. However, there is a distinction since "creed" is the broader term encompassing any set of fundamental beliefs. Therefore, to clarify intent "religion" is added wherever only "creed" appears and "creed" is added wherever only "religion" appears.

Section 64-305(11) defines "national origin" as "ancestry". "National origin" and "ancestry" are both listed as prohibited bases for discrimination in many sections of chapter 3. Since this use of the term "ancestry" is totally superfluous and potentially confusing, it is deleted wherever it appears in the same list with "national origin" in Title 64, chapter 3.

Approved by Committee on Judiciary

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There are no changes in HB 36, & will not be re-run.
Please refer to white copy for complete text. SECOND READING

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(2) No insured named in a policy~~,~~ ~~nor~~ or any employee of ~~such~~ the insured ~~shall~~ may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium~~,~~; ~~or any such~~ special favor or advantage; or valuable consideration or inducement.

(3) No such insurer ~~shall~~ may make or permit any unfair discrimination ~~either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin,~~ in the premium or rates charged for insurance, ~~or~~ in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

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There are no changes in HB 36, & will not be re-run.

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HB36

religion, or sex~~,~~; or ~~any matter~~

(b) not allowed to be sent through the mail. ~~Such arguments may not be filed or printed in the voters' pamphlet.~~

(2) Nothing in this ~~act~~ section relieves ~~either an argument nor~~ an author of an argument from civil or criminal responsibility for statements contained in an argument printed in the voters' pamphlet."

Section 5. Section 40-3512, R.C.M. 1947, is amended to read as follows:

"40-3512. Unfair discrimination, rebates prohibited — property, casualty, surety insurances. (1) No property, casualty, or surety insurer or any employee, ~~or~~ representative, ~~thereof, and no~~ agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, ~~shall~~ pay, allow, or give~~,~~ or offer to pay, allow, or give, directly or indirectly, ~~as an inducement to insurance, or after insurance has been effected,~~ any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; ~~of insurance, or~~ any special favor or advantage in the dividends or other benefits to accrue thereon~~,~~; or any valuable consideration or inducement ~~whatever,~~ not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy~~,~~ ~~nor~~ or any employee of ~~such~~ the insured ~~shall~~ may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium~~,~~; ~~or any such~~ special favor or advantage; or valuable consideration or inducement.

(3) No such insurer ~~shall~~ may make or permit any unfair discrimination ~~either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin,~~ in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section ~~shall~~ may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents~~,~~ or solicitors~~,~~ or as prohibiting ~~any~~ an insurer from allowing or returning ~~to its participating policyholders, members or subscribers,~~ lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers."

Section 6. Section 64-301, R.C.M. 1947, is amended to read as follows:

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 14	act to revise and clarify the laws relating to marriage, husband and wife, reconciliation, dissolution of marriage, support, parent etc.	1-4-76	Kvaalen	Friday 7th	amended "do pass"	1-10-77
HB 22	to extend validity of consent to minors to abortion in conformance with the Montana Abortion Control Act	1-4-76	Kvaalen	Tuesday 11th	do pass as amended	1-13-77
HB 27	act for the revision and clarification of laws relating to corporations, partnerships and associations	1-4-76	Kvaalen	Friday 7th	amended "do pass"	1-10-7
HB 28	act to raise the legal age for consuming or possessing alcoholic beverages to 19	1-4-76	Bengston	Tuesday 11th	do pass as amended	1-12-77
HB 29	act to submit to the electors an amendment to the constitution to raise the legal drinking age for consuming or possessing alcoholic beverages to 19	1-4-76	Bengston	Tuesday 11th	do pass as amended	1-12-77
HB 36	act to standardize the grounds for unlawful discrimination to include the term	1-4-76	Marks	Friday 7th	"do pass"	1-10-77

JUDICIARY COMMITTEE

January 7, 1977

The third meeting of the House Judiciary Committee was called to order in room 436, the Capitol Building, Helena, Montana at 8:00 a.m. with Chairman Scully presiding. All members were present with the exception of Representatives Seifert and Kennerly, absent.

Scheduled for hearing were: House Bills 14, 27, 36, 43, and 46.

CHAIRMAN SCULLY: I would like to announce the addition of Representative Conroy to the Judiciary Committee.

CHAIRMAN SCULLY: We will open the hearing on House Bill #14, sponsored by Representative Kvaalen, District #53.

PROPONENT: Dave Cogley staff counsel for the Code Commissioner, explained the summary, which is to generally revise and clarify the law relating to marriage, husband and wife, reconciliation, dissolution of marriage, support, parent and child, and adoption. In some sections. crossing out to avoid duplication. In some cases, correction of typographical errors, minor changes in wording, sections having been repealed.

Diana Dowling explained that there are now 99 subject areas and when they are finished there will be 48 to be presented to the legislature in 1979.

The hearing closed on House Bill #14, with no opponents.

CHAIRMAN SCULLY: We will open the hearing on House Bill #43, sponsored by Representative Kvaalen.

PROPONENT: Joan Mayer, staff attorney, Legislative Council, explained the changes made, such as rewording, deleting archaic language, deleting sections that have been repealed, correction of errors, made more specific generally. In cases of duplication, generally suggested that the older statute be repealed.

CHAIRMAN SCULLEY: Is there any reference in the code to judicial officer meaning an attorney?

After some discussion, Mr. Sculley directed Jim Gardner, the legal researcher, to check on this.

CHAIRMAN SCULLEY: Will there be a place, a library, in the legislative council where we can find all this?

DIANA DOWLING: It will not have an official name, but yes, there will be a specific place made available.

MR. PYFER: It is more specific, so made a reference to a criminal cod

Mrs. Dowling explained why cemeteries are in the association & corporation section. She explained general business corporation law, the corporation act of MOntana, (there is no act entitled the Corporation Act of Montana and the context clearly indicates that a reference to general business corporation law was intended.

Mr. Pyfer commented that it may be covered under local government.

CHAIRMAN SCULLY: What happens to a reference if it is recodified?

MR. PYFER: We will have a system of referrals, a cross-reference in the legislative council.

The hearing closed on House Bill #27.

Tom Honzel explained his understanding of the term misdemeanor as meaning (a case tried by a justice of the peace and a fine of $500 or 6 months in county jail and if more, has to be tried in the district court, $1000 fine or up to one year in jail.) This is not a defined term, but a slang term, not codified.

The hearing opened on House Bill #36

DIANA DOWLING: Proponent. She said this was just to make all the statutes read the same. They went through the entire code, to change to have consistent terminology. They used a computer search to pick out all the instances of varying phrases.

The question was asked if there would be some way to prevent this from happening again, and Mrs. Dowling stated that now they are on the computer and find it in a very short time. They now have 8,000 entries.

The meeting adjourned at 11:20 a.m.

CHAIRMAN SCULLEY announced ther would be a presentation on the joint state wide defender system at 9:30 a.m. Saturday, the following morning There will be a hearing at another tine, this is just for the out of state people who cannot come then.

REPRESENTATIVE JOHN SCULLY
CHAIRMAN

JS:mec

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE

January 10, 1977

The fourth meeting of the House Judiciary Committee was held in Room 436 of the Capitol Building on Monday, January 10, 1977 at 8:00 a.m. Chairman Scully presided. All members were present.

Scheduled for hearing were House Joint Resolutions #2 and 3.

JOHN VINCENT: Sponsor - District #78
When the interim committee took this on, they found they did not have the information necessary. The members of the committee spent hours looking into it to justify the action they took. The case loads, time spent, etc.

REPRESENTATIVE TEAGUE: Why was the number of case loads important?

REPRESENTATIVE VINCENT: We tried to tell how busy a court is, and this would lead us in that direction. We did not have any statistical data to see if the requests were justified.

Several comments were made about reports, court records, etc.

The sponsor closed with the comment, "In order to make a rational judgment, we had to convene to appoint a special committee."

Hearing closed on House Joint Resolution #2.

Hearing opened on House Joint Resolution #3.

JOHN VINCENT: This bill deals with a request that the use of law clerk and secretarial assistance be investigated before creating additional judgeships. Rather than ask for a new district or a new judge, you should look into less expensive and less sweeping suggestions, before you start redistricting lines.

REPRESENTATIVE COURTNEY: Did you survey the district judges to see if they needed law clerks and secretaries?

REPRESENTATIVE VINCENT: It was very conclusive that this help was needed.

CHAIRMAN SCULLY: Would you have any objection if it was acted upon and then held until the bill on the new three district judges came through the committee?

REPRESENTATIVE VINCENT: "No" The interim committee wanted to clarify and expedite and make the judicial system more efficient.

HOUSE BILL #27 — Representative Keyser moved "do pass".
Second by Representative Day

REPRESENTATIVE RAMIREZ: move to amend page 1 line 17
Second by Representative Roth
strike: "forms" and insert "is".

The motion carried "do pass as amended" with a unanimous vote.

HOUSE BILL #36 — Representative Hand moved "do pass".
Second by Representative Seifert.

The motion carried with a unanimous vote.

HOUSE BILL #43 — Representative Keyser made the motion "do pass"
Second by Representative Seifert.

The motion was made by Representative Holmes on page 16, line 6
Second by Conroy.
Amend by inserting a new subsection (f) "to the library of each custodial institution, one copy;"
Renumber subsequent subsections.

The motion carried unanimously on the amendme

REPRESENTATIVE LORY: I move to hold for more information.
Second by Representative Holmes.

REPRESENTATIVE RAMIREZ: will check all categories and see whether someone other than an elected official can be impeached.

REPRESENTATIVE RAMIREZ: Page 7, lines 11 through 14, judicial officers and officers of the court. line 10, page 32,

There followed discussion about heads of dep ments, executive officers, etc.

The meeting recessed subject to the call of chair.

After some deliberation the meeting adjourne at 11:45 a.m.

REPRESENTATIVE JOHN SCULLY
CHAIRMAN
Mary Ellen Connelly, Secretary

JPS:mec

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 4	1-27-77	3-9-77	3-10-77					3-10-77	
H.B. 5	1-25-77	2-21-77	3-19-77					3-19-77	
H.B. 14	1-15-77	2-23-77	2-23-77				2-23-77		
H.B. 22	1-21-77	2-25-77	2-25-77				2-25-77		
H.B. 27	1-15-77	2-23-77	2-25-77					2-25-77	
H.B. 28	1-22-77	2-24-77	3-19-77		WITHOUT RECOMMENDATION 3-19-77				
H.B. 29	1-22-77	2-24-77	3-19-77					3-19-77	
H.B. 36	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 39	1-21-77	2-25-77	2-25-77					2-25-77	
H.B. 43	1-22-77	3-5-77	3-8-77					3-8-77	
H.B. 46	1-22-77	3-5-77	3-7-77					3-7-77	
H.B. 53	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 71	3-2-77	3-21-77	3-21-77				3-21-77		
H.B. 72	1-21-77	3-3-77	3-3-77				3-3-77		
H.B. 74	1-15-77	3-3-77	3-3-77					3-3-77	
H.B. 77	3-2-77	3-12-77	3-12-77					3-12-77	

(Separate Sheet for Senate House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 24, 1977

The meeting of this committee was called to order at 9:40 a.m. on the above date by Senator Turnage, Chairman, in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Warden and Senator Roberts who were excused.

WITNESSES PRESENT TO TESTIFY:

Representative Esther Bengtson - District 59, Shepherd
Senator Chet Blaylock - District 35, Laurel
Leonard H. Sargent - Executive Director, Montana School Boards Association
Maurice Hickey - Montana Education Assn.
Representative Roth - District 10, Big Sandy
Angela Romain - concerned citizen and college student
Bob Campbell - Missoula attorney
Kevin Hunt - chairman, Montanans for Equal Rights
Chad Smith - Montana School Board Association
Diana Dowling - Code Commissioner, Legislative Council

CONSIDERATION OF HOUSE BILLS 28 and 29:

Rep. Bengtson of Shepherd, chief sponsor of these bills, told the committee that H.B. 28 was comprised of changes made to conform with the new Constitution and that H.B. 29 was a constitutional amendment. She introduced Leonard Sargent, executive director of the Montana School Boards Assn., who read a prepared statement to the committee in support of these bills. (See Exhibit 1)

The next proponent was Chad Smith, a Helena attorney representing the Montana School Boards Assn., who said that one of the most important bills in regard to its application to schools is H.B. 28. He further testified that there is no magic to the figure of "18" years except that that is the age at which most children leave high school. He said that, if 18 year olds are allowed to purchase alcohol and if they are in high school, it makes alcohol and beer more easily assessible to younger students. He then said that many laws require different age limits, so that the magic status of "18" is not true, and what is important is that the proper age can be assigned to a particular subject. There is an exception in H.B. 28 for the 18 year olds who work in establishments or stores where they handle alcohol or beer. Mr. Smith said that they feel that H.B. 28 and 29 have great merit and urged that they be concurred in.

Marice Hickey of the Montana Education Assn., was the next proponent, saying that history goes back to April, 1976, when the delegate assembly of the M.E.A. voted in support of raising the drinking age to 19 years.

considered by the committee.

DISPOSITION OF SENATE BILL 125:

Senator Towe moved to reconsider the DO NOT PASS recommendation previously made on this bill by this committee on February 21, 1977. The motion carried unanimously. He then moved to adopt the attached amendments to S.B. 125. The motion carried unanimously. Senator Towe then moved that S.B. 125 as amended DO PASS. The motion carried unanimously. (See attachment #1)

CONSIDERATION OF HOUSE BILL 53:

Diana Dowling, the Code Commissioner of the Legislative Council representing Rep. Marks who could not be present, explained that this bill was to correct an error in the law.

Senator Towe moved that H.B. 53 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 36:

Diana Dowling explained that this bill had been done by a summer law school intern because they had found that laws were not consistent in regard to creed or religion, and they have made that standard now throughout the codes. They also cleared up Title 64 in regard to national origin including ancestry. This bill is just to make laws on discrimination standard.

Senator Towe moved that H.B. 36 BE CONCURRED IN. The motion carried unanimously.

There being no further business before the committee at this time, the committee adjourned at 10:50 a.m..

SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2-24-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret			✓

Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Fifth Legislature

In Regular

Session

AUG 15 1977

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STATE LAW LIBRARY

Held at Helena, the Seat of Government

Regular Session

January 3, 1977 to April 19, 1977

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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shall be given to the person within 24 hours after commitment by the department. *The department* shall provide a reasonable opportunity for the person to consult counsel."

Section 52. Section 80-2802, R.C.M. 1947, is amended to read as follows:

"**80-2802. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by *community-centered* services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this act.

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, *and* consultative and educational services.

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(8) establish standards for public mental health facilities; *and*

(9) evaluate performance of public mental health facilities in compliance with federal and state standards."

Section 53. **Repealer.** Sections 38-210, 71-101, 71-107, 71-118, and 71-233.5, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 38

AN ACT TO STANDARDIZE THE GROUNDS FOR UNLAWFUL DISCRIMINATION TO INCLUDE THE TERMS RELIGION AND CREED AND TO DELETE THE TERM ANCESTRY WHICH IS INCLUDED IN THE TERM NATIONAL ORIGIN BY DEFINITION; AMENDING SECTIONS 11-3283, 11-3917, 16-4806, 37-104.10, 40-3512,

64-301, 64-306, 64-307, 64-317, 64-318, 64-319, 64-320, 64-321, 64-323, 64-324, 71-2412, AND 80-2806, R.C.M. 1947; AND REPEALING SECTION 64-211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"**11-3283. Persons in classified service not affected by political or religious opinions or race.** No person in the classified service or seeking admission thereto *may* be appointed, reduced, removed, or in any way favored or discriminated against, because of political opinions or affiliations or because of race, color, *creed,* or *religion.*"

Section 2. Section 11-3917, R.C.M. 1947, is amended to read as follows:

"**11-3917. Prohibition against discrimination.** For all of the purposes of this act, no person *may be subjected to discrimination* because of race, *religion,* creed, color, or national origin."

Section 3. Section 16-4806, R.C.M. 1947, is amended to read as follows:

"**16-4806. Discrimination in employment prohibited.** No contract of employment *may* be entered into except in compliance with the Equal Opportunity Act of 1966 and executive order of 1966, providing that there be no discrimination in the employment of persons *because of* race, *religion,* creed, color, or national origin."

Section 4. Section 37-104.10, R.C.M. 1947, is amended to read as follows:

"**37-104.10. Type of arguments to be excluded from pamphlet — liability for libel.** (1) The secretary of state shall reject *and shall not file or print in the voters' pamphlet* an argument or other matter:

(a) held by the attorney general to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter or *to contain* any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward or that tends to cast ridicule or shame upon a group of persons by reason of race, color, *creed,* religion, or sex; or

(b) not allowed to be sent through the mail.

(2) Nothing in this *section* relieves an author of an argument from civil or criminal responsibility for statements contained in an argument printed in the voters' pamphlet."

Section 5. Section 40-3512, R.C.M. 1947, is amended to read as follows:

"**40-3512. Unfair discrimination, rebates prohibited — property, casualty, surety insurances.** (1) No property, casualty, or surety insurer or any employee, representative, agent, or solicitor *thereof may, as an inducement to purchase insurance or after insurance has been effected,*

pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the *insurance* policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy *or* any employee of *the* insured *may* knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

(3) No such insurer *may* make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance *either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.*

(4) Nothing in this section *may* be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting *an* insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits *to its participating policyholders, members, or subscribers.*"

Section 6. Section 64-301, R.C.M. 1947, is amended to read as follows:

"**64-301. Freedom from discrimination in employment and in places of public accommodation and amusement.** The right to be free from discrimination because of race, creed, *religion,* color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) *the* right to obtain and hold employment without discrimination; *and*

(2) *the* right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement."

Section 7. Section 64-306, R.C.M. 1947, is amended to read as follows:

"**64-306. Specific discriminatory practices.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, *creed,* religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an

employer or employee because of race, marital status, *creed,* religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use *an employment* application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, *religion,* color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, *religion,* color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection *(1)* based on bona fide occupational qualifications shall be strictly construed.

(3) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, *creed,* religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, *creed,* religion, sex, age, physical or mental handicap, color, or national origin.

(4) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, *creed,* religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, *creed,* religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property; or

(c) to make a written or oral inquiry or record of the sex, race, *creed,* religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property. A private residence designed for *single-family* occupancy in which sleeping space is rented to guests *and* in which the landlord also resides *is* excluded from the provisions of this *subsection.*

(5) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, *creed,* religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(6) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, *creed,* religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, *creed,* religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person *of* a particular race, creed, *religion,* sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in *Article* VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in *Article* VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(7) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, *conditions, or* privileges of the institution because of race, *creed,* religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, *creed,* religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or

discrimination based on the race, color, *creed,* religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members *through a quota or otherwise* because of race, color, sex, marital status, age, *creed,* religion, physical or mental handicap, or national origin.

(8) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, *religion,* creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

(9) It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

(10) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed."

Section 8. Section 64-307, R.C.M. 1947, is amended to read as follows:

"64-307. When discrimination justified. (1) Sex, marital status, age, physical or mental handicap, race, *creed,* religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory *criterion* in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

(3) Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy."

Section 9. Section 64-317, R.C.M. 1947, is amended to read as follows:

"64-317. Employment of state and local government personnel — discrimination prohibited. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including *appraisal of* qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons."

Section 10. Section 64-318, R.C.M. 1947, is amended to read as follows:

"**64-318. Nonparticipation in discriminatory practices.** *(1)* All services of every state and local governmental agency shall be performed without discrimination based upon race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin.

(2) No state or local facility *may* be used in the furtherance of any discriminatory practice, nor *may a* state or local agency become a party to *an* agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state and local agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this act and shall initiate comprehensive programs to remedy any defect found to exist."

Section 11. Section 64-319, R.C.M. 1947, is amended to read as follows:

"**64-319. Public contracts.** Every state or local contract or subcontract for construction of public buildings or for other public work or for goods and services shall contain a provision that all hiring shall be on the basis of merit and qualifications and a provision that there *may* be no discrimination on the basis of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin by the persons performing the contract. As used in this act, "qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Section 12. Section 64-320, R.C.M. 1947, is amended to read as follows:

"**64-320. Employment requests — cooperation with commission — enforcement of policy.** (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. *A* job request indicating an intention to exclude *a* person because of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor shall cooperate with the commission for human rights in encouraging and enforcing *compliance by* employers and labor unions with the policy of this act and *promotion of* equal employment opportunities."

Section 13. Section 64-321, R.C.M. 1947, is amended to read as follows:

"**64-321. Licensing.** No state or local department, board, or agency *may* grant, deny, or revoke the license or charter of *a* person on the grounds of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin. Each state and local agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this act."

Section 14. Section 64-323, R.C.M. 1947, is amended to read as follows:

"**64-323. State programs.** All education, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state or local agencies or in which state or local agencies participate shall be open to all persons, who shall be accepted on the basis of merit and qualifications without regard to race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin. Such programs shall be conducted to encourage the *full* development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall be encouraged to involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest."

Section 15. Section 64-324, R.C.M. 1947, is amended to read as follows:

"**64-324. Distribution of funds — withholding state assistance.** Race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin *may* not be considered as limiting factors *with regard to applicants' qualifications for benefits authorized by law* in state or locally administered programs involving the distribution of funds; nor *may* state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices."

Section 16. Section 71-2412, R.C.M. 1947, is amended to read as follows:

"**71-2412. Discrimination forbidden.** The services provided under this act shall be made available without discrimination on the basis of race, color, creed, *religion,* or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964."

Section 17. Section 80-2806, R.C.M. 1947, is amended to read as follows:

"**80-2806. Availability of services.** The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, *religion*, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964."

Section 18. **Repealer.** Section 64-211, R.C.M. 1947, is repealed.

Approved March 18, 1977.

CHAPTER NO. 39

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MINERALS, OIL, AND GAS; AMENDING SECTIONS 50-202, 50-204, 50-205, 50-303, 50-304, 50-305, 50-429, 50-476, 50-480.7, 50-714, 50-805, 50-1043, 50-1203, 50-1209, 50-1404, 50-1503, 50-1504, 50-1505, 50-1506, 50-1507, 50-1508, 50-1509, 50-1510, 50-1511, 50-1512, 50-1513, 50-1514, 50-1515, 50-1516, 50-1516.1, 50-1517, 60-227, 60-606, 69-3303, 69-3305, AND 73-115, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-202, R.C.M. 1947, is amended to read as follows:

"**50-202. Samples of fifty pounds per ton to be retained until settlement.** *A* person, association, or corporation which *buys* any ores upon *an* agreement to pay for *them* in amount dependent upon *their* metallic contents or *smelts* any ore shall retain from the pulp or crushed ore, as the same is sampled, *a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be* selected regularly and at equal intervals from any lot of ore so *bought* or to be smelted, and shall keep *this quantity* separate from any other ores or pulp for a period of *30* days or until full settlement is made and accepted by the shipper. *Until full* settlement is made and accepted, the ore shipper, his agents, or representatives *may* take from the quantity so retained any part thereof for the purpose of sampling or assaying *that part*; *however*, the value of any part so taken by *the* owner or shipper may be deducted from the total value of the ore delivered by him."

Section 2. Section 50-204, R.C.M. 1947, is amended to read as follows:

"**50-204. Umpire assayers — appointment, qualifications, and duties.** *A* person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt *them*, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who *has* operated an assay office or chemical laboratory within this state *for at least 1 year. The person, association, or corporation* shall *submit to the selected assayer* all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of *the* ore. *The* chosen assayer shall be known as the umpire for *the* person, association, or corporation."

Section 3. Section 50-205, R.C.M. 1947, is amended to read as follows: